WOMEN'S RIGHTS IN A MALE-SUFFRAGE STATE

The early agitators for women's suffrage made a chief part of their plea the injustices which were suffered by women under the then existing law. The merger of the wife's legal personality in that of her husband, the transfer by marriage of the ownership and control of her property to him, her inability to make contracts or transfers of what little property interest was left to her, and especially the priority of the husband's claim to the guardianship of the children, were felt to be intolerable grievances suffered by women, and the argument was easy that she needed the suffrage in order to deliver herself from these wrongs.

This argument is less heard now, because it has come to be generally known that the ancient law concerning married women has been swept away, and an equality of personal and property rights has been established, in many at least of our states, by the action of male voters, male legislators and male judges.

The subordination of women and the consolidation of the property resources of the family in the hands of the husband seems to have been supported by the general opinion of women as well as of men in the eighteenth century, the occasional advocates of the emancipation of women were ridiculed and ostracised by women at least as much as by men, the revolution of feeling which took place on that subject in the nineteenth century was as much the work of male as of female reformers, and met as prompt response in legal action from the voters and law-makers as it did in sentiment from the then silent sex.

But rhetoric easily ignores even well-known facts. An article which originally appeared in the *Century Magazine*[1] under the title, "What have Women done with the Vote," and is now being circulated as a suffrage pamphlet, recites a long series of enactments in the suffrage states, including such doubtful reforms as "the recall of officers with particular emphasis on the judiciary," and "the recall of judicial decisions, providing that only the supreme court of the state shall have the power to declare laws unconstitutional, and that these decisions may be disapproved and set aside by a majority vote of the people," but including many other measures of modern social legislation which have been adopted in male-suffrage as well as in equal-suffrage states.

[1] March, 1914, by George Creel.

As to the legislation of a radical type mentioned above, the explanation is probably quite simple; the eleven suffrage states, all in the far West except Kansas, are still largely controlled by a pioneer and adventurous element in the population which has little respect for settled institutions or precedents, generally assumes that a novelty is necessarily an improvement, and therefore has been quick to adopt on the one hand woman suffrage, and on the other a mass of experimental constitutional and social legislation.

But if one should confine the comparison to measures which are of proved or generally recognized utility, the conservative states of the East may be found to have been as prompt in adopting them, and as thorough in their application in applying them, as the "progressive" states of the West.

The history of Colorado in the last two years seems to show that the long schedule of radical legislation in which that state has indulged did not usher in the millennium.

It may be instructive to make a brief study of the course of legislation and judicial decision in regard to the wrongs formerly suffered by women in a state which is often denounced as reactionary.

Connecticut undoubtedly should be classed as one of the most conservative of American states. It lived under the charter granted by Charles II until 1818, when the desire to disestablish the Congregational churches led to the adoption of a new constitution; and the Constitution of 1818 is still in force, except as modified by thirty-five amendments. In the first McKinley-Bryan campaign, when the new issues made a new alignment of voters along the lines of conservatism and radicalism, the greatest proportional shift toward Bryan occurred in Colorado, and the greatest proportional change the other way in Connecticut. In 1912 it cast over two votes for Taft to every one for Roosevelt. So that it has remained true, so far as its general attitude to constitutional change is concerned, to its traditional title, "the land of steady habits." Woman suffrage has never got even so far as to be submitted by the legislature to the vote of the people.

And yet I think it is accurate to say that the reform of the laws and decisions of Connecticut in regard to the rights of both married and unmarried women has been more complete than that in any other state in the Union.

The Puritan settlers of Connecticut were anything but progressive. They said: "The maxims of the ancient common law on

this subject are plain and simple; our state of manners and society do not require that they should be relaxed or qualified. The principles, therefore, which govern in the English courts of chancery ought not to [be] engrafted into our chancery system."[2]

"They who could declare to the world, as prefatory to their first code of laws, 'we have endeavoured not only to ground our capital laws on the WORD OF GOD, but also all our other laws in the justice and equity held forth in that word, which is a most perfect rule,' would not be likely to swerve from the maxims of *unity and subjection* attached by sacred writers to the matrimonial vow. They had not then the art of refining upon the institution of marriage, which they might have since learned in England; and which has wrought up a system of separate property, separate management and separate residence,—at once the cause and effect of licentiousness."[3]

The single definite property right which the English law had conferred upon married women, that of dower, was not recognized in Connecticut during the generation between the settlement of the colony and 1672;[4] though this is perhaps due to the fact that in the very small and primitive community every estate was settled in the discretion of the court, whose members had personal knowledge of the situation and needs of the family. And when dower was conferred by the act of 1672, it was limited to the land which the husband left at his death, leaving him free to dispose of his real estate during his lifetime without his wife's consent.

The husband took absolute title to the wife's real as well as her personal estate,[5] and could convey it without her concurrence.[6]

The doctrine of the wife's sole and separate estate, which had already been worked out by the chancery courts of England, was denied by the early Connecticut decisions,[7] and not fully recognized until 1848;[8] and the validity of a gift of personal property by the husband to his wife was not settled until 1856.[9]

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[2] *Dibble v. Hutton*, 1 Day 237 (1804).

[3] *Fitch v. Brainerd*, 2 Day 163, 193-4 (1805).

[4] Brown's Appeal, 72 Conn. 148, 153 (1899).

[5] *Adams v. Kellogg*, Kirby 441 (1787); *Fitch v. Brainerd*, 2 Day 163, 191 (1805); Swift's System of the Laws of Connecticut (1795), p. 195.

[6] Preamble to the Act of 1723, Acts & Laws of Connecticut, 1750, p. 119.

[7] *Dibble v. Hutton*, 1 Day 221 (1804).

[8] *Jarvis v. Prentice*, 19 Conn. 272 (1848).

[9] *Riley v. Riley*, 25 Conn. 154, 164 (1856).

It is no exaggeration to say that the early Connecticut law denied to the wife even the meager property rights which she had by the English common law, and left her without any legal right, either in the property of her husband, or in that which had been hers or came to her by gift or by inheritance.

As to her personal rights, her situation was more favorable. Wife-beating was not a feature of the Puritan character; and the claim of "the lower rank of people, who were always fond of the common law," which Blackstone remarked upon,[10] was never recognized in Connecticut, nor indeed in any American state, except by early decisions in North Carolina and Mississippi, which were afterward overruled in those states.[11]

Chief Justice Swift wrote in 1795: "It is with much regret that I mention it as a part of the common law that the husband possesses the barbarous power of chastising the wife. . . . In this state, I have never known the question agitated. . . . If such a question should ever be brought before a court, I hope they will discard the savage doctrine of the common law and decide that a husband is punishable for the unmanly act of chastising his wife."[12]

At least as early as 1750, the causes of divorce were the same, whichever party was the plaintiff[13] and the courts held a criminal connection between the husband and an unmarried woman to be adultery entitling the wife to a divorce;[14] thus giving her an equality with the husband as to her remedies for conjugal infidelity,—an equality which is denied to her to this day by the laws of England.

This extreme denial of property rights to the wife did not long continue. In 1672 the wife was given dower in the land left by the husband at his death; and in 1723 her signature was required for the conveyance of her real estate. By 1795 the rules of the English common law were followed, and English authorities cited, as to the property rights of husband and wife.[15]

But when the great wave of reform legislation swept over the United States in the 1840s, Connecticut was one of the first states

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[10] 1 Black. Com. 444.

[11] Peck on Domestic Relations, p. 32.

[12] Swift's System (1795), p. 202.

[13] Acts and Laws of 1750, p. 43.

[14] Swift's System (1795), p. 192.

[15] Swift's System (1795), p. 194-201; *Griswold v. Penniman*, 2 Conn. 564 (1818).

to respond to the new ideas of the time. The most notable landmarks of that reform period were perhaps the New York Constitution of 1846, which provided for the codification of all the laws of the state, a project which has even yet been only partially carried into effect, the statutes abolishing the disqualification of parties and interested persons to testify in actions at law, and the extension of the property rights of married women.

Connecticut passed an act in 1848 by which the parties to suits were permitted to testify;[16] and in 1845 it passed the first of the long series of statutes in favor of married women, this first step being an act protecting the husband's life interest in the wife's real estate from being taken for his debts. But soon after it passed a series of far more important statutes, by which first, bequests and inheritances coming to the wife, and afterward personal property owned by her before marriage, or coming to her by gift or by her earnings, were to pass to the husband, not as before as his own property, but in trust for the support of the wife and their family.[17]

But on April 20th, 1877, the revolution in the property rights of husband and wife was completed by an act which began with the broad declaration that "neither husband or wife shall acquire by force of the marriage any right to or interest in any property held by the other before the marriage or acquired after the marriage," gave the wife the right to make contracts with, or conveyances to, third persons "in the same manner as if she were unmarried," and gave to the surviving wife exactly the same rights in her deceased husband's estate that the husband, if surviving, takes in his wife's estate.[18]

By this act, and the liberal interpretation that has been given to it, husband and wife in Connecticut are made absolutely independent of each other, and exactly equal to each other, in property rights. In fact, the only distinction between them is in favor of the wife, who is entitled to demand support from the husband, and to enforce her demand by criminal prosecution or by civil suit, even if she should have abundant means, and he should be dependent on his labor for his livelihood; a distinction which theoretically is grossly unjust to the husband, but which in practice has not produced any general oppression of husbands.

[16] Public Acts of 1848, ch. 44.

[17] Peck on the Property Rights of Husband and Wife under the Laws of Connecticut, §§ 54-62; Gen. Stat. of 1902, § 4541.

[18] Public Acts of 1877, ch. 114.

If the wife continues to be at any economic disadvantage, it is due not to the laws of the state, but to the laws of nature and to the general usages of society, which give to the husband a more lucrative portion of the family activities than that which falls to the wife.

The legislature, having by the act of 1877 removed from the wife any legal disability as to property, in 1901 removed the personal grievance which has perhaps been the subject of more complaint than any other, by an act as to guardianship, the first sentence of which is as follows: "The father and mother of every minor are hereby constituted joint guardians of the person of such minor, and the powers, rights and duties of both the father and mother in regard to such minor shall be equal."[19]

A rather striking feature of this evolution is that the change of law by judicial decision has gone on *pari passu* with that by legislation. The recognition of the injustice done to women by the existing law, and the determination to do her full justice, seems to have affected alike the numerous body of men, mostly farmers and business men, who have made up our legislatures, and the smaller group of specially educated men who have sat on the supreme bench.

In many of the states, the construction and application of statutes altering the status of married women has been narrow, and the rule has been strictly adhered to that the common law could not be considered as abrogated any farther than the clear terms of the statute require. But in Connecticut the courts, ever since the passing of the act of 1877, have interpreted it liberally and beyond the strict letter, holding for instance, in Spitz's Appeal, 56 Conn. 184 (1888), that the wife could make contracts with her husband, and in *Mathewson v. Mathewson,* 79 Conn. 23 (1906), that she could sue him at law on a promissory note, although the statute mentioned only contracts with a third person, and did not mention suits at all. In the last-named case, *Mathewson v. Mathewson,* the court discussed and interpreted the act in the broadest spirit, making of it a veritable *magna charta* for women. The court said that "in enacting this law the state adopted a fundamental change in public policy," that by it "the unity in the husband of his and his wife's legal identity and capacity to own property was removed, and a new foundation, namely, equality of husband and wife in legal identity and capa-

[19] Public Acts of 1901, ch. 107.

city of owning property, was laid;" that before the act the wife was a person *non sui juris,* capable of doing only such legal acts as were expressly named in the law, but that by the general terms of the law she was made a person *sui juris,* possessed of all property rights not expressly denied to her, though not mentioned specifically in the act.

But the liberality of the Connecticut decisions in regard to women has not been confined to those affecting property rights, nor to those based on the statute of 1877. In the case of Mary Hall, 50 Conn. 131 (1882), the Connecticut supreme court held that a woman was entitled to admission to the bar under a statute for the admission of "such persons as are qualified therefor," although the statute had contained that phrase since 1821, and had never before been applied to any but male persons. I know of no other judicial decision admitting women to the legal profession on general reasoning, not supported by any statute passed with that intent.

In *Foot v. Card,* 58 Conn. 1 (1889), the Connecticut supreme court held that a woman may sue a third person for injuries to her marital rights caused by the alienation of the affections of her husband, thus repudiating the declaration of Blackstone that "in these relative injuries notice is only taken of the wrong done to the superior of the persons related, . . . while the loss of the inferior by such injuries is totally unregarded. . . . One reason for which may be this: that the inferior hath no kind of property in the company, care or assistance of the superior, as the superior is held to have in those of the inferior, and therefore the inferior can suffer no loss or injury."[20]

The court was then unable to find any precedent for its decision; but two months later the New York court of appeals decided in the same way, though without citing the Connecticut decision which probably had not yet been officially published,[21] and since then many other courts have followed these decisions, while others have deemed it impossible to establish this right, unknown to the common law, without the aid of legislation.

In *Brown v. Brown,* 89 Conn. 42 (1914), the court remains true to its tradition of liberality in regard to the rights of women by sustaining an action at law by a married woman for personal injuries done to her by her husband, in face of a unanimous

[20] 3 Blackstone's Comm., 142.

[21] *Bennett v. Bennett,* 116 N. Y. 584 (1889).

current of contrary decisions in the other states, and in the Supreme Court of the United States.

Returning to the thought with which this article began, while the arguments that suffrage is an inherent right, that its denial to women places them with the inferior and delinquent classes, that its exercise would educate women and ennoble men, and that the state needs the feminine spirit of sympathy as an element in its making and enforcing of the law, lose none of their force by this recital, it would seem that Connecticut women can hardly argue that they need the suffrage because of the unwillingness of men to give them fair and equal treatment as to their personal and property rights.

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